Thavananthan a/l Balasubramaniam v Majlis Peguam Negara

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 02–46 OF 2006(W)
ALAUDDIN PCA, ZULKEFLI AND JAMES FOONG FCJJ
18 SEPTEMBER 2009

Legal Profession — Roll of advocates and solicitors — Replacement on roll — Conviction on offence of soliciting and accepting corrupt money — Whether very serious offence — Whether appellant lacked penitence or repentance — Whether appellant's appeal construed as challenge to court's integrity — Whether fair and reasonable to be restored to roll

The appellant was charged in the sessions court for soliciting and accepting corrupt money under s 3(a)(i) and s 4(a) of the Prevention of Corruption Act 1961, respectively. However he was discharged and acquitted of both charges without his defence being called. The High Court affirmed the decision but allowed the prosecution's appeal on the second charge and remitted back the matter to the sessions court. After hearing his defence, the appellant was again acquitted and discharged. However, upon appeal, the acquittal was set aside and the appellant was convicted and sentenced to three years imprisonment and a fine of RM5,000 in default 12 months imprisonment. The appellant's subsequent appeal to the Supreme Court was dismissed and the appellant consequently served his imprisonment term. After his release the appellant was granted Annual Practising Certificate. Subsequently, upon an inquiry, the disciplinary committee recommended to the disciplinary board that the appellant be suspended from practice for a period of six months. However, the disciplinary board enhanced the punishment and ordered that the appellant be struck off the Roll of Advocates and Solicitors of the High Court of Malaya. The appellant's appeal to the High Court and subsequent appeal to the Federal Court was dismissed. The appellant subsequently filed another notice of motion pursuant to s 107 of the Legal Profession Act 1976 ('the LPA') to be restored to the roll. The application was dismissed and therefore the appellant's present appeal. The respondent opposed to the appellant's application on the grounds, inter alia; (i) that the offence committed by the appellant on which he was convicted was a very serious offence; (ii) that there has been a lack of penitence (sorry) or repentance (regret) and more importantly the lack of an acceptance of the consequences of the grave wrong he committed; and (iii) the appellant has challenged all the decisions made against him by both the court and the disciplinary board. The main issue for

consideration in this appeal was whether it was fair and reasonable to restore the appellant to the roll.

Held, allowing the appeal with no order as to costs:

(1) Although the offence committed by the appellant was very serious, he had been duly punished. He had been convicted and had served his sentence. A conviction should not be regarded in every case as being permanent unfit to be readmitted into the Roll of advocates and solicitors. Disbarment is not necessarily intended to be permanent. It was for the appellant in this case to show that he was now a fit and proper person to have his name restored to the Roll (see para 7).

(2) In the present case, the disciplinary board did not agree with the disciplinary committee's recommendation that the appellant be suspended from practice for a period of six months and had instead ordered the appellant be struck off the Roll. In the circumstances, the appellant's appeal to the High Court against the disciplinary board's order could not be faulted as he believed that the punishment meted out was excessive having compared himself with the cases of *Gooi Soon Seng* and *Phang Ah Hee*. At any rate, it can be said here that the appellant was merely exercising his legal right of appeal (see para 8).

(3) In the case of *PP v Wong Kim Fatt*, [1991] 3 CLJ 2188 *(Wong Kim Fatt*'s case) Wong Kim Fatt was restored to the roll about three years after he was struck off the Roll. In the present case, the appellant also made his application to be restored to the roll about three years after he was struck off the Roll. There was no reason why the appellant should be treated differently, especially in view of the fact that both the Bar Council and the learned High Court judges agreed that the appellant's case comes within the ambit of *Wong Kim Fatt*'s case (see para 10).

(4) The learned High Court judges have misdirected themselves when they made the finding that it was too soon for the applicant to apply for restoration to the Roll. On the facts, the appellant had put forward a very strong basis for his restoration to the Roll. The findings by the learned High Court judges were thus unreasonable as they have failed to give due consideration to the factors favourable to the appellant. Further it was grossly unfair and unreasonable for the appellant to be made to endure the long wait before he filed again for reinstatement to the Roll (see paras 11–12).

(5) The appellant in appealing against the High Court and the disciplinary board's decision was merely pursuing his rights and legal remedies accorded to him to the fullest and it should not be construed as a challenge to the court's integrity and the system in place under the

administration of justice. Further, this right is enshrined in art 5 of the Federal Constitution, and s 107 of the LPA itself (see para 14). A

(6) The appellant need not go as far as to categorically express in writing or in his affidavit that he was repentant and would maintain the integrity and the standards expected of him as a legal practitioner. The fact that the appellant had filed his application to be restored to the Roll which was supported by the various letters of recommendation and testimonial by senior members of the Bar and the judiciary were more than sufficient to show that the appellant is now fit and proper person (see para 15). B C

[Bahasa Malaysia summary

Perayu dituduh di mahkamah sesyen atas kesalahan meminta dan menerima wang rasuah di bawah s 3(a)(i) dan s 4(a) Akta Pencegahan Rasuah 1961. Walau bagaimanapun, dia dilepas dan dibebaskan atas kedua-dua pertuduhan tanpa memanggilnya membela diri. Mahkamah Tinggi mengesahkan keputusan tersebut tetapi membenarkan pihak pendakwaan merayu atas tuduhan kedua dan perkara tersebut dikembalikan ke mahkamah sesyen. Setelah mendengar pembelaannya, perayu sekali lagi dilepas dan dibebaskan. Tetapi, semasa rayuan, pembebasan tersebut diketepikan dan perayu disabit dan dihukum penjara tiga tahun dan didenda RM5,000 dan jika gagal membayar, dipenjara 12 bulan. Rayuan perayu ke Mahkamah Agung ditolak dan perayu kemudiannya menjalani hukuman penjaranya. Selepas dibebaskan, perayu diberikan Sijil Amalan Guaman Tahunan. Setelah itu, dalam suatu siasatan, jawatankuasa tatatertib menyarankan lembaga tatatertib menggantung perayu daripada mengamalkan undang-undang selama enam bulan. Walau bagaimanapun, lembaga tatatertib menambah hukumannya dan mengarahkan perayu dikeluarkan daripada Daftar Peguambela dan Peguamcara Mahkamah Tinggi Malaya. Perayu merayu ke Mahkamah Tinggi dan rayuannya ke Mahkamah Persekutuan ditolak. Perayu kemudian memfailkan satu lagi notis usul berikutan s 107 Akta Profesion Undang-Undang 1976 ('APU') agar dimasukkan kembali ke dalam daftar. Permohonan tersebut ditolak dan justeru rayuan ini. Responden membantah permohonan perayu atas alasan-alasan, antara lain, (i) bahawa kesalahan yang dilakukan oleh perayu yang telah disabitkan merupakan kesalahan yang serius; (ii) bahawa tiada kekesalan dan keinsafan dan yang lebih penting tiada kesedaran terhadap akibat kesalahannya; dan (iii) perayu mempersoalkan semua keputusan yang telah dibuat terhadapnya oleh mahkamah dan lembaga tatatertib. Isu utama untuk dipertimbangkan dalam rayuan ini ialah sama ada adil dan wajar untuk mengembalikan perayu ke dalam daftar. D E F G H I

Diputuskan, membenarkan rayuan tanpa perintah untuk kos:

(1) Walaupun kesalahan yang dilakukan oleh perayu adalah serius, dia telahpun dihukum. Dia telah disabitkan dan telah menjalani

hukumannya. Suatu pensabitan tidak harus dianggap kekal dalam setiap kes, tidak layak dimasukkan kembali ke dalam Daftar Peguambela dan Peguamcara. Pemecatan tidak seharusnya kekal. Perayu dalam kes ini hendaklah menunjukkan bahawa dia kini patut dan wajar dikembalikan ke dalam daftar (lihat perenggan 7).

(2) Dalam kes ini, lembaga tatatertib tidak bersetuju dengan saranan jawatankuasa tatatertib bahawa perayu digantung daripada beramal sebagai peguam bela dan peguam cara selama enam bulan malah mengarahkan perayu dikeluarkan daripada daftar tersebut. Dalam keadaan ini, rayuan perayu ke Mahkamah Tinggi terhadap perintah lembaga tatatertib tidak boleh dipersalahkan kerana dia percaya bahawa hukuman yang dikenakan adalah melampau apabila perbandingan dibuat dengan kes *Gooi Soon Seng* dan *Phang Ah Hee*. Di sini, perayu hanyalah mendapatkan haknya untuk merayu (lihat perenggan 8).

(3) Dalam kes *Wong Kim Fatt*, Wong Kim Fatt dimasukkan kembali ke dalam daftar selepas tiga tahun dikeluarkan daripada daftar tersebut. Dalam kes ini, perayu juga membuat permohonannya untuk dikembalikan ke dalam daftar tersebut selepas kira-kira tiga tahun dia dikeluarkan daripada daftar tersebut. Tiada sebab mengapa perayu harus ditangani secara berbeza, terutamanya apabila Majlis Peguam dan hakim-hakim Mahkamah Tinggi bersetuju kes perayu terangkum dalam kes *Wong Kim Fatt* (lihat perenggan 10).

(4) Hakim-hakim Mahkamah Tinggi yang bijaksana telah salah arah apabila membuat keputusan bahawa masih terlalu awal bagi perayu memohon untuk dikembalikan dalam daftar tersebut. Daripada fakta-fakta, perayu mengemukakan asas yang kukuh untuk kemasukan semula ke dalam daftar tersebut. Oleh itu, keputusan oleh hakim-hakim Mahkamah Tinggi yang bijaksana adalah tidak wajar disebabkan mereka gagal mempertimbangkan faktor-faktor yang menyokong perayu. Selanjutnya, adalah tidak adil dan tidak wajar bagi perayu menunggu suatu masa yang lama sebelum dia memfailkan semula kemasukannya ke dalam daftar tersebut (lihat perenggan 11–12).

(5) Tindakan perayu merayu terhadap keputusan Mahkamah Tinggi dan lembaga tatatertib hanyalah mengambil hak-haknya dan juga remedi undang-undang yang diperuntukkan kepadanya dan tidak harus ditafsirkan sebagai mempersoalkan intergriti mahkamah dan juga sistem di bawah pentadbiran keadilan. Selanjutnya, hak ini termaktub dalam perkara 5 Perlembagaan Persekutuan dan s 107 APU (lihat perenggan 14).

(6) Perayu tidaklah perlu menyatakan secara bertulis atau dalam afidavitnya bahawa dia telah insaf dan akan menjaga intergriti dan standard sebagai

seorang pengamal undang-undang. Fakta bahawa perayu telah memfailkan permohonannya untuk dimasukkan ke dalam daftar yang disokong oleh beberapa pucuk surat sokongan dan perakuan oleh ahli-ahli senior Majlis dan Kehakiman adalah lebih dari cukup bagi menunjukkan bahawa perayu kini patut dan wajar beramal semula (lihat perenggan 15).]

Notes

For a case on replacement on roll, see 9 *Mallal's Digest* (4th Ed, 2005 Reissue) para 2082.

Cases referred to

Clyne, ex p; Re Bar Association of NSW [1962] NSWR 709 (refd)
Teoh Hooi Leong v Bar Council, Malaysia [1991] 2 MLJ 190, SC (refd)
PP v Gooi Soon Seng (unreported)
PP v Phang Ah Hee (unreported)
PP v Wong Kim Fatt [1991] 3 CLJ 2188 (folld)

Legislation referred to

Federal Constitution art 5
Legal Profession Act 1976 ss 103D(3), 107
Official Secrets Act 1972
Penal Code s 408
Prevention of Corruption Act 1961 (Repealed) ss 3(a)(i), 4(a), 12

Appeal from: Originating Motion No R-17B-26 of 2005 (High Court, Kuala Lumpur)

Mohd Shafee bin Abdullah (Shafee & Co) for the appellant.
Lim Siew Ming (Ong Yu Jim with her) (Raja Darryl & Loh) for the respondent.

Zulkefli FCJ:

BACKGROUND

[1] This is an appeal by the appellant against the decision of the High Court at Kuala Lumpur in dismissing the appellant's application to be restored to the Roll of advocates and solicitors pursuant to s 107 of the Legal Profession Act 1976 ('LPA'). The relevant background facts of the case are as follows:

(a) on 25 August 1989 the appellant was admitted as an advocate and solicitor to the High Court of Malaya;

(b) on 1 December 1989 the appellant joined the legal and judicial service and was appointed as a magistrate at the Kuala Lumpur Magistrates' Court;

(c) the appellant was charged on 28 November 1992 in the sessions court for soliciting ('the first charge') and for accepting ('the second charge') corrupt money under s 3(a)(i) and s 4(a) of the Prevention of Corruption Act 1961 ('PCA');

(d) on 8 March 1993, the sessions court discharged and acquitted the appellant of both charges without calling for the defence;

(e) the prosecution appealed to the High Court, which affirmed the acquittal and discharge the appellant in respect of the first charge under s 3(a)(i), but allowed the prosecution's appeal in respect of the second charge under s 4(a) of the PCA, and ordered the appellant to enter his defence in respect thereof ('the first decision of the High Court');

(f) the case was remitted back to the same Kuala Lumpur Sessions Court judge, who, after hearing the appellant's defence, again acquitted and discharged the appellant of the second charge; the prosecution again appealed to the High Court against the acquittal and discharge of the second charge;

(g) on 25 April 1994, the High Court allowed the prosecution's appeal against the second charge, set aside the acquittal and convicted the appellant. He was sentenced to three (3) years imprisonment and a fine of RM5,000 in default twelve (12) months imprisonment ('the second decision of the High Court');

(h) the appellant thereafter appealed to the Supreme Court against the second decision of the High Court;

(i) on 21 March 1997, the Supreme Court dismissed the appellant's appeal and affirmed his conviction and sentence to three (3) years imprisonment but set aside the fine of RM5,000 in default 12 months imprisonment;

(j) the appellant consequently served his imprisonment term in the Kajang prison from 21 March 1997 till 20 March 1999;

(k) the appellant was released from the Kajang prison on 20 March 1999 and subsequent to his release had applied for his Annual Practising Certificate ('Practising Certificate') from the Bar Council; the Bar Council granted the appellant the Practising Certificate for the year 1999 but without prejudice to their right to lodge a complaint with the disciplinary board;

(l) on 29 June 1999, the Bar Council lodged a complaint against the appellant with the disciplinary board;

(m) from 12 June 1999 till 7 June 2002 the appellant practiced law at Messrs Ananthan and Partners, Malacca, subject to the disciplinary enquiry by the Bar Council;

(n) later, an enquiry was held by the disciplinary committee and on 23 March 2002, the disciplinary committee recommended to the disciplinary board that the appellant be suspended from practice for a period of six (6) months;

(o) despite the recommendation by the disciplinary committee that the appellant be suspended for six months in the exercise of the powers conferred by s 103D(3) of the LPA, the disciplinary board decided to enhance the punishment and ordered that the appellant be struck off the Roll of Advocates and Solicitors of the High Court of Malaya on 12 June 2002;

(p) on 19 June 2002 the appellant appealed to the High Court against the disciplinary board's decision;

(q) on 24 March 2003, the High Court dismissed the appellant's appeal with costs;

(r) being dissatisfied with the High Court's decision dated 24 March 2003, the appellant appealed against the whole decision to the Federal Court; on 30 October 2003, the Federal Court dismissed the appellants' appeal with no order as to costs;

(s) on 5 July 2005 the appellant filed another notice of motion pursuant to s 107 of the LPA to be restored to the Roll of advocates and solicitors;

(t) on 28 September 2006 the High Court dismissed the appellant's notice of motion to be restored as an advocate and solicitor; and

(u) the appellant now appeals to this court against the said High Court's decision dated 28 September 2006.

THE LAW

[2] Section 107 of the LPA provides as follows:

> The High Court may, if it thinks fair and reasonable, at any time order the Registrar to restore to the Roll the name of an advocate and solicitor which has been removed from, or struck off the Roll.

[3] It is clear and settled that the test under s 107 of the LPA is whether in the circumstances of the case it is fair and reasonable that the applicant be restored to the Roll of Advocate and Solicitor of the High Court of Malaya. On this point in the case of *Teoh Hooi Leong v Bar Council, Malaysia* [1991]

2 MLJ 190, the Supreme Court in its judgment, inter alia, had stated that the word 'fair' must necessarily mean that the decision must be fair to the members of the public, to the court and last but not least to the advocate and solicitor concerned. To be reasonable the Supreme Court went on to state that the decision must be based on reasonable grounds and be supported by cogent evidence and not one based on conjecture or speculation.

[4] It is also to be noted that under s 107 of the LPA there is no stipulation as to the period of time that must elapse between the date of the order striking the solicitor off the Roll and the date of his application for replacement on the Roll. Be that as it may, it is nevertheless clear that the Legislature has conferred on the court the discretionary power to order restoration it deems fair and reasonable and this discretionary power must be exercised judiciously.

THE RESPONDENT'S GROUNDS OF OPPOSITION

[5] Learned counsel for the respondent submitted that the respondent's opposition to the appellant's application to be restored to the Roll is focused on two main grounds. Firstly, it is contended by the respondent that the offence committed by the appellant on which he was convicted was a very serious offence. What is significant is the fact that the offence was committed by the appellant in his judicial capacity as a magistrate. This offence, to the respondent, is one that strikes at the very heart of the administration of justice. Secondly, it is the respondent's contention that there has been a lack of penitence (sorry) or repentance (regret) and more importantly the lack of an acceptance of the consequences of the grave wrong he committed. It is the respondent's case that by the appellant's conduct, he has demonstrated that he does not belief that he should have been struck off despite his conviction of the offence by the High Court and the affirmation of the same by the Supreme Court. On this point the respondent took the stand that the appellant has challenged all the decisions made against him by both the court and the disciplinary board. He has exhausted every avenue of appeal available to him. He has spent a lot of time and effort in opposing his conviction of the offence committed and the decision to strike him off the Rolls. Thus the appellant had never accepted the consequences of his conviction, ie being struck off the Roll.

DECISION

[6] The main issue for consideration in this appeal is whether it is fair and reasonable to restore the appellant to the Roll. Following from there is the question as to how long the appellant shall wait from the time he was struck off the Roll until he is allowed to apply to be restored to the Roll. I am of the

view that each case must be considered on its own special factual circumstances bearing in mind there is no time frame stipulated under s 107 of the LPA before a disbarred member can be restored to the Roll. I am also of the view that the sentences meted out on other similar comparable cases to the appellant's case should be taken into consideration in determining whether it is fair and reasonable to restore the appellant to the Roll.

[7] It is not disputed as contended by the respondent that the offence committed by the appellant is very serious as it was committed by the appellant while holding judicial office as a magistrate. However, I am of the view that the appellant has been duly punished. He had been convicted of the offence and had served his sentence of three years imprisonment. A conviction should not be regarded in every case as being permanent unfit to be readmitted into the Roll of advocates and solicitors. Disbarment is not necessarily intended to be permanent. It is for the appellant in this case to show that he is now a fit and proper person to have his name restored to the Roll (see the case of *Teoh Hooi Leong v Bar Council, Malaysia*). I would also like to state here that any criminal offence committed by a practising lawyer is equally serious when compared with an offence committed by a magistrate as in the present case. No distinction should be made between these two categories of officers of the court as to the gravity of the offence committed by them as both are entrusted with the duty to honourably discharge their respective role in the administration of justice.

[8] I am of the view that the starting point for the consideration of the appellant's case is best evaluated from the recommendation made by the disciplinary committee of the Bar Council onwards. It is to be noted that the disciplinary committee in previously decided cases, after having concluded its enquiry in the disciplinary proceedings against Gooi Soon Seng and Phang Ah Hee who were both formerly holding the post of deputy public prosecutors, had recommended that both of them be suspended from practice only for a period of six months. The disciplinary board upon the recommendation made by the disciplinary committee in its decision suspended Gooi Soon Seng for three months. In the case of *Phang Ah Hee* (unreported), the disciplinary board in its decision suspended him for a period of 15 months. Both Gooi Soon Seng and Phang Ah Hee did not appeal against the decision of the disciplinary board. It is to be stated here that Gooi Soon Seng and Phang Ah Hee who like the appellant, are members of the Judicial Legal Service at the time of the commission of the offence. Gooi Soon Seng was convicted for an offence under s 12 of the PCA and he was sentenced to one day's imprisonment and a fine of RM500. Phang Ah Hee was convicted for an offence under the Official Secrets Act 1972 and he was sentenced to six months imprisonment and a fine of RM1,000. Likewise in this present case, the disciplinary committee after its enquiry had

recommended to the disciplinary board that the appellant be suspended from practice for a period of six months. However, the disciplinary board did not agree with the disciplinary committee's recommendation. Instead, the disciplinary board enhanced the sentence and ordered that the appellant be struck off the Roll. The appellant then appealed to the High Court against the disciplinary board's order. In my view, at that stage the appellant cannot be faulted for not accepting the decision of the disciplinary board by lodging his appeal to the High Court as he believed then that the punishment meted out was excessive having compared himself with the cases of *Gooi Soon Seng* (unreported) and *Phang Ah Hee*. At any rate it can be said here that the appellant was merely exercising his legal right of appeal.

[9] It is noted that during the appellant's appeal to the High Court against the disciplinary board order to strike him off the Roll, the Bar Council (the respondent) had submitted that the closest comparison in respect of the misconduct and punishment imposed is that of the action taken against a lawyer Wong Kim Fatt who was struck off the Roll. The learned judges of the High Court in the said appeal too agreed with the respondent's submission that the closest case for comparison to the appellant's case is *PP v Wong Kim Fatt*, [1991] 3 CLJ 2188 *(Wong Kim Fatt*'s case). Wong Kim Fatt was charged and convicted by the High Court for an offence of criminal breach of trust under s 408 of the Penal Code and was sentenced to one year imprisonment. He appealed to the Federal Court against the conviction and sentence but the Federal Court on 19 April 1983 upheld the conviction and sentence of one year imprisonment. After the disciplinary proceeding was taken against him by the Bar Council, Wong Kim Fatt was struck off the Roll on 18 August 1984. He applied for reinstatement to the Roll on 28 October 1987 and this was allowed. The reinstatement was in the same year, 1987.

[10] By way of comparison of *Wong Kim Fatt*'s case with the present case, it can be seen that Wong Kim Fatt was restored to the Roll about three years after he was struck off the Roll. The appellant also made his application to be restored to the Roll about three years after he was struck off the Roll on 12 June 2002 wherein he applied in July 2005 for his reinstatement to the Roll but the appellant's application was dismissed. On this point, it is my judgment that there is no reason why the appellant should be treated differently, especially in view of the fact that both the Bar Council and the learned High Court judges agreed that the appellant's case comes within the ambit of *Wong Kim Fatt*'s case.

[11] It is also my considered view that the learned High Court judges have misdirected themselves when in their judgment they made the following findings:

> Obviously it is also too soon for the applicant here to apply for restoration to the Roll. He must be patient. He must be willing to endure the long wait before he files, once again, for reinstatement to the Roll (see p 37 of the appeal record).

I am of the view the above findings are unreasonable as the learned High Court judges have failed to give due consideration to the following factors favourable to the appellant:

(a) he had served his sentence of imprisonment for three years from 21 March 1997 to 20 March 1999 (served two years after 1/3 remission) at the Kajang prison;

(b) after he was released from prison, he applied to the respondent for his Practising Certificate and was granted; he resumed practice as a sole proprietor under the name and style of Messrs Ananthan and Partners from 3 July 1999 to 31 December 2000 and he ceased practice on 1 January 2001; thereafter he joined Messrs N Saraswathy Devi as a legal assistant on 2 January 2002 and later with Messrs Huang (Khairun Kumar and Associates from 17 April 2002 to 15 May 2002;

(c) the appellant was in fact issued with a Practising Certificate for him to practice not once but thrice, ie for the period between 1999–2000; for the period between 2000–2001 and the period between 2001–2002; if the respondent was of the view that the appellant was not a fit and proper person to be readmitted to the profession, it would not have issued him with the Practising Certificate in the very first place;

(d) the appellant has lost the 'prime' of his life and career since he was convicted when he was 28 years old and he would be about 45 years of age now; and

(e) the various letters of recommendations/testimonials by senior members of the Bar and the judiciary which strongly recommended the restoration of the appellant to the Roll.

[12] Based on the above factors it can be seen that the appellant has put forward a very strong basis for his restoration to the Roll. Considering again the circumstances and gravity of the offence committed by Wong Kim Fatt (which was for CBT), it appears that the appellant has endured a longer wait as compared to Wong Kim Fatt. Wong Kim Fatt was restored to the Roll after three years of being struck off. The question now is how much longer does the appellant have to wait. It is grossly unfair and unreasonable for the appellant to be made to endure the long wait before he files, once again, for reinstatement to the Roll.

[13] Learned counsel for the respondent in objecting to the appellant's application for reinstatement to the Roll had contended that the appellant's pursuit in appealing against the High Court's decision and the disciplinary

board's decision amounts to a non-acceptance of the consequences of his conviction and disbarment, thus reflecting his lack of penitence (sorry), or repentance (regret) and lack of an acceptance of the grave wrong he has committed. In support of such a contention learned counsel referred to us the case of *Ex p Clyne; Re Bar Association of NSW* [1962] NSWR 709. In *Ex p Clyne*, the Supreme Court of New South Wales, inter alia, held that by the applicant's conduct and his statement and his writings since his disbarment he had exhibited and still exhibits a degree of casuistry, a lack of humility and an intellectual arrogance which are incompatible with a sincere understanding of, and a genuine belief in, the code of honour of the Bar. The Supreme Court found to some extent the applicant was still asserting what he did was unobjectionable and had distinguished between what he called his acceptance of the reasons of the High Court and his agreement with such reasons. The applicant's application for readmission as a barrister was therefore dismissed and it was the court's view that he needs more time for greater maturity and a fuller understanding of his obligations so that he will be able to demonstrate the sincerity in his professed repentance.

[14] With respect, I cannot agree with the above contention of the respondent. I am of the view what the appellant had done in the present case was merely pursuing his rights and legal remedies accorded to him to the fullest and it should not be construed as a challenge to the court's integrity and the system in place under the administration of justice. Further, this right is enshrined in art 5 of the Federal Constitution, and s 107 of the LPA itself. It is highly unreasonable and inconsistent to provide the appellant with this right and remedy on the one hand, and rob it by blaming him for exercising the same right and remedy on the other hand. It is to be stated here that unlike the position of the applicant in *Ex p Clyne*'s case, the appellant in the present case has not shown in any way at any time after his conviction of the offence committed and disbarment to have been critical or objectionable of the court's and the disciplinary board's decision.

[15] Learned counsel for the respondent in his submission before us contended that the appellant had provided nothing convincing to indicate in writing or in the affidavit in support of his application that he is penitent or repentant or that he will in fact maintain the integrity and expected standards of the legal profession. To the respondent the appellant has not shown as yet that he is a fit and proper person. With respect on this point, I do not think that the appellant needs to go that far to categorically express in writing or in his affidavit that he is repentant and will maintain the integrity and the standards expected of him as a legal practitioner. The fact that the appellant had filed his application to be restored to the Roll which was supported by the various letters of recommendation and testimonial by senior members of the Bar and the judiciary are more than sufficient to show the appellant is

now fit and proper person.

CONCLUSION

[16] For the reasons above stated I would allow the appeal by the appellant. I would therefore make an order as prayed for in the application of the appellant: that is the appellant be restored to the Rolls of Advocates and Solicitors of the High Court of Malaya under s 107 of the LPA. Finally I make no order as to cost in respect of the appeal before this court.

[17] My learned brothers Alauddin Mohd Sheriff PCA and James Foong Cheng Yuen FCJ have seen this judgment in draft and have expressed their agreement with it.

Appeal allowed with no order as to costs.

Reported by Mashrifah Ravendran